

ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES,) Civil Action Number
PLAINTIFF, and the) 02-CV-3793 JNE/RLE
)
STATE OF MINNESOTA,)
Plaintiff-Intervenor,) AMENDED CONSENT DECREE
)
v.)
)
GOPHER STATE ETHANOL L.L.C.,)
Defendant.)

SEP 05 2003
FILED _____
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTERED _____
DEPUTY CLERK'S INITIALS _____

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WHEREAS, the State of Minnesota, through the Minnesota Pollution Control Agency
Complainant against Defendant;

WHEREAS, this Consent Decree is being lodged simultaneously with the filing of the
from each dry-process ethanol plant, including Defendant's facility, were underestimated;

WHEREAS, Plaintiffs further alleged in these Complaints that potential air emissions
State Implementation Plan ("SIP") approved pursuant to 42 U.S.C. § 7410;

appropriate air pollution control equipment required by 40 C.F.R. § 52.21 and the Minnesota
emitting facility without first obtaining the appropriate preconstruction permits and installing the
plant, including Defendant, commenced construction of an emitting facility or modified an
WHEREAS, Plaintiffs further alleged in these Complaints that each dry-process ethanol
promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules");

at Part C of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7470-7492, and the regulations
emitting facility in violation of the Prevention of Significant Deterioration ("PSD") requirements
commenced construction of a major emitting facility and major modifications of a major
including Defendant, Gopher State Ethanol L.L.C. (herein, "Gopher State" or "Defendant"),
WHEREAS, in these Complaints Plaintiffs alleged that each of the twelve plants,
against each dry-process ethanol plant in Minnesota;

filed twelve Complaints in the United States District Court for the District of Minnesota, one
States"), on behalf of the United States Environmental Protection Agency (herein, "EPA"), has
WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United

CONSENT DECREE

WHEREAS, on February 7, 2002, the MPCA met with representatives of the ethanol WHEREAS, Gopher State's thermal oxidizer has reduced the facility's emissions; approximately \$1.2 million;

WHEREAS, Gopher State's thermal oxidizer was installed in June, 2001, at a cost of WHEREAS, Gopher State's thermal oxidizer, it to install its thermal oxidizer;

WHEREAS, on February 21, 2001, the MPCA amended Gopher State's permit allowing emissions;

MPCA permit in order to install a thermal oxidizer to reduce its emissions and odor related to its WHEREAS, on December 11, 2000, Gopher State applied for an amendment to its

- 2001 - 9.8 million gallons;
- 2000 - 6.8 million gallons;

and has produced ethanol in the following quantities:

WHEREAS, Gopher State is a small facility that began ethanol production in mid-2000, 20, 1997, and was issued the permit on April 15, 1998;

WHEREAS, Gopher State applied for a minor source permit from MPCA on November laws, including Minnesota Rule ("Minn. R.") 7007.3000;

and by failing to install appropriate pollution control technology, in violation of applicable state the appropriate pre-construction permits, by failing to accurately measure and report emissions, Minnesota, including Defendant, has been in violation of the Minnesota SIP, by failing to obtain WHEREAS, the Complainants in Intervention allege that each dry-process ethanol plant in

filed a Complaint in Intervention in each of the twelve actions commenced by Plaintiff; ("MPCA" or "Plaintiff-Intervenor"), has, simultaneously with lodging of this Consent Decree,

§§ 7413 and 7477. Venue is proper under Section 13(b) of the Act, 42 U.S.C. § 7413(b), and hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties consenting Defendant under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C.

1. The Complainants state a claim upon which relief can be granted against the

1. JURISDICTION AND VENUE

of the violations alleged in the Complainants, it is hereby ORDERED AND DECreed as follows:

NOW, THEREFORE, without any admission of fact or law, and without any admission

trial of any issues,

WHEREAS, Plaintiffs and the Defendant consent to entry of this Consent Decree without

appropriate means of resolving this matter, and

the public interest, and that entry of this Consent Decree without further litigation is the most

Defendant have agreed that settlement of this action is in the best interest of the parties and in

WHEREAS, the United States and Plaintiff-Intervenor (collectively, "Plaintiffs"), and the

WHEREAS, the Defendant does not admit the violations alleged in the Complainants,

under Section 114 of the Act, 42 U.S.C. § 7414;

alleged violations and voluntarily provided requested information without information requests

WHEREAS, Gopher State has worked cooperatively with EPA and MPCA regarding the

negotiate with EPA and MPCA to resolve potential violations;

WHEREAS, on June 21, 2002, Gopher State executed a letter of commitment to

related compliance issues;

plants in Minnesota, including Gopher State, to discuss VOC test results, VOC emissions, and

(b). Gopher State owns and operates a plant in St. Paul, Minnesota, for the § 7602(e), and the federal and state regulations promulgated pursuant to the Act.

3. (a). Gopher State is a "person" as defined in Section 302(e) of the Act, 42 U.S.C.

III. FACTUAL BACKGROUND AND APPLICABLE DEFINITIONS

has been transferred agrees in writing to fulfill the obligations of this Consent Decree.

obligation imposed by this Consent Decree unless the party to whom the right, title or interest termination of the Consent Decree, the conveyance shall not release the Defendant from any Defendant sells or otherwise assigns any of its right, title, or interest in its facility, prior to of this Consent Decree to the proposed purchaser or successor-in-interest. In the event the provide a copy of the Consent Decree and the Control Technology Plan required in Paragraph 15 if possible, but no later than the closing date of such sale or transfer. The Defendant shall Regional Administrator for the region in which the facility is located before such sale or transfer, send a copy of such written notification by certified mail, return receipt requested, to the EPA purchaser or successor-in-interest in writing of the existence of this Consent Decree, and shall (i.e., a plant or mill) subject to this Consent Decree, Gopher State shall advise such proposed termination of the Consent Decree, in the event Defendant proposes to sell or transfer its facility Technology Plan on behalf of Gopher State, and the Defendant's successors and assigns. Before who are charged with implementing the terms of this Consent Decree and the approved Control Plaintiff, and upon the Defendant, as well as the Defendant's officers, employees, and agents 2. The provisions of this Consent Decree shall apply to and be binding upon the

II. APPLICABILITY

under 28 U.S.C. § 1391(b) and (c).

Paragraphs 5 through 10, and implemented through Paragraphs 15 through 17 and 26 through 28 VOCs, PM, PM₁₀, CO, and NOx. Gopher State's compliance program is summarized below in and distillation facility to attain the emission levels required under this Consent Decree for 4. Gopher State shall implement a program of compliance at its ethanol production

IV. COMPLIANCE PROGRAM SUMMARY

promulgated pursuant to the Act.

shall have the meaning given to those terms in the Act, and the federal and state regulations (d). **Definitions:** Unless otherwise defined herein, terms used in this Consent Decree

and state regulations promulgated pursuant to the Act.

emitting facility," as defined by Section 169(1) of the Act, 42 U.S.C. § 7479(1), and the federal (c). Plaintiffs allege that Gopher State's ethanol plant in St. Paul, Minnesota is a "major

load-out systems, and fugitive dust emissions from facility operations.

emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol truck under Section 112(b)(1), 42 U.S.C. § 7412(b)(1) of the Act. The primary sources of these (NOx) and other pollutants are generated, including hazardous air pollutants ("HAPs") listed

("PM₁₀"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), nitrogen oxides significant quantities of particulate matter ("PM"), particulate matter at or below 10 microns for animal feed. The Plaintiffs allege that in the course of these manufacturing activities

separates the liquid ethanol from the corn meal, which Gopher State may dry or sell as wet cake fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation manufacture of ethanol. Gopher State receives whole corn which is then milled, cooked, and

modification that will result in a significant net emission increase as defined by 40 C.F.R. Part 60, Gopher State shall demonstrate compliance with the required emission levels on a unit-by-unit basis as set forth in the approved Control Technology Plan.

5. Gopher State shall control and minimize fugitive particulate matter emissions from facility operations as set forth in the approved Control Technology Plan required under Part 6 of this Consent Decree and which is Attachment 1 to this Consent Decree.

6. Gopher State shall demonstrate compliance with the required emission levels on a unit-by-unit basis as set forth in the approved Control Technology Plan.

7. Gopher State shall demonstrate compliance with the emission limits established under this Consent Decree by the use of performance testing, parametric monitoring, recordkeeping and reporting, or initial and periodic compliance testing, where appropriate, as set forth in the approved Control Technology Plan.

8. Gopher State shall maintain records to demonstrate compliance with New Source Performance Standards ("NSPs"), Part 60, Subparts DC, KB, and VV, and its fugitive dust tons per year ("TPY"), for each pollutant, for VOCs, PM, PM₁₀, sulfur dioxide ("SO₂"), NO_x, and CO based on a 12-month rolling sum, rolled monthly, and recorded monthly.

9. Gopher State shall accept source-wide allowable emission caps equivalent to 95 tons per year ("TPY") for each pollutant to its federally-enforceable operating permit to incorporate the 95 TPY allowable emission caps and the lower emission limits applicable to each unit as set forth in the approved Control Technology Plan.

10. Gopher State shall apply for a modification to its federally-enforceable operating permit to incorporate the 95 TPY allowable emission caps and the lower emission limits applicable to each unit as set forth in the approved Control Technology Plan.

11. For the effective period of the Consent Decree, Gopher State shall obtain a

months, the termination section of this Consent Decree may be invoked and the facility shall be operating conditions, that its facility has operated at or below the 95 TPY emission caps for 24 months, the Gopher State demonstrates, through results of compliance tests or evidence of State shall obtain a PSD/NSR permit prior to beginning construction of the modifications.

13. If Gopher State demonstrates, through results of compliance tests or evidence of Technology Plan requirements as set forth in this Consent Decree. In this situation, Gopher State shall obtain a PSD/NSR permit application that includes the approved Control approval a source-wide PSD/NSR permit application that includes the approved Control the 95 TPY allowable emission caps, then Gopher State shall complete and submit for MPCA the total limited potential emissions of VOCs, PM, PM₁₀, SO₂, NO_x and CO will exceed Decree, the total limited potential emissions of VOCs, PM, PM₁₀, SO₂, NO_x and CO will exceed 12. If, as a result of any future modifications, prior to termination of the Consent Gopher State shall not contest what is contained in its permit application.

Requirements as set forth in the approved Control Technology Plan and this Consent Decree, and requirements as set forth in the approved Control Technology Plan and this Consent Decree, and limits (to the extent unaffected by the permit modification), monitoring and recordkeeping emission caps, or a schedule to meet the 95 TPY allowable emission caps, and all emission enforceable permit, and MPCA shall propose to incorporate in the permit, the 95 TPY allowable actual emissions baseline. Gopher State shall include in its application for the federally- under this Consent Decree and the approved Control Technology Plan to determine its past net emissions increase, Gopher State shall use results from its initial compliance testing required this Paragraph. For purposes of determining whether a modification will result in a significant under Minnesota Rule 7007.1250 and 7007.1450 subp. 2 are excluded from the requirements of approved Control Technology Plan of this Consent Decree and any modification that qualifies required in Part V Section A ("Installation of Controls and Applicable Emission Limits") and the 52, but will not exceed the 95 TPY allowable emission caps. However, the modifications

PPM CO, and reduction of PM and PM₁₀ based on operation of percent reduction of CO emissions or emissions no higher than 100 emissions no higher than 10 parts per million ("PPM") of VOC, 90 (a). Feed Drivers: 95 percent reduction of VOC or

Decree:

Techmology Plan, which has been approved by Plaintiffs, is Attachment I to this Consent reductions for the identified units in subparagraphs (a) through (j). Gopher State's Control technology ("Control Technology Plan") capable of meeting the following emission level 15. Gopher State shall implement a plan for the installation of air pollution control

A. INSTALLATION OF CONTROLS AND APPLICABLE EMISSION LIMITS

V. COMPLIANCE PROGRAM REQUIREMENTS

for all applicable requirements created by the Consent Decree.

respectively. In addition, the Consent Decree shall be referenced in the permit as the legal basis and VV, and the fugitive emission control program referenced in Paragraphs 15(j) and (e), Decree that are excluded as Title I conditions under this Paragraph are NSPs Subparts DC, KB, shall not contest what is contained in its permit application. Requirements under this Consent applicable to the source unless and until changed through a permit amendment. Gopher State conditions. Such emission limits, monitoring and recordkeeping requirements shall remain into any existing or new permit issued to the source as federally-enforceable Title I permit requirements of the approved Control Technology Plan and this Consent Decree be incorporated shall request, and MPCA shall propose, that the emission limits, monitoring and recordkeeping 14. In any permit application required pursuant to this Consent Decree, Gopher State modifications will then be governed by applicable state and federal regulations.

treated as a synthetic minor for air permitting requirements. Permit requirements for future

EU 001-002, CE 010
NOx limit. The following units are subject to this limit: EU 050, a whole shall not allow NOx emissions in excess of the Group for all emission units in this group. The fuel used by this group as Paragraph 23 of this Consent Decree and will be used to calculate compliance with the NOx limit, based on actual fuel usage shall be established during the initial performance test required in NOx per MMBtu. Emission factors for each unit in this group made for a designated period of time based on a limit of 0.08 lbs of per MMBtu at capacity. An adjustment for propane usage may be established a Group NOx limit based on 0.04 lbs of NOx per unit, (g). Additional Requirements for NOx Emission Units:

The following unit is subject to this limit: FS 003
Railcar loadout: All railcars shall be dedicated as ethanol only.
Truck loadout: 95 percent reduction of VOC.
(f). Ethanol Loadout:

operations. The following area is subject to this limit: FS 001
for minimization of fugitive dust emissions from facility (e). Fugitive Dust Control PM: A program shall be developed

following unit is subject to this limit: EU 055
established pursuant to Paragraph 22 of this Consent Decree. The following units are subject to these limits: EU 001, EU 002
(d). Cooling Cyclones: VOC emission limit(s) shall be

following units are subject to these limits: EU 001, EU 002
Consent Decree, or approved AP-42 factors may be used. The emission factor will be used to determine compliance with Paragraph 15(g). The initial performance testing required pursuant to Paragraph 23 of this

(e). Gas Boilers: A NOx emission factor shall be established after

The following units are subject to this limit: EU 022-023, EU 030
limit is less than 200 PPM of VOC, then 20 PPM or lower of VOC.
(b). Fermentation Units: 95 percent reduction of VOC or, if

050
Paragraph 15(g). The following unit is subject to these limits: EU
The emission factor will be used to determine compliance with testing required pursuant to Paragraph 23 of this Consent Decree. emission factor shall be established after initial performance testing pursuant to Paragraph 24 of this Consent Decree. A NOx
Technology Plan and as established after initial performance pollution control technology specified in the approved Control

productivity is limited to the completion of the ethanol in process at the Gopher State's wet cake emissions have not been quantified, wet cake quantity its emissions using a method agreed to by EPA and MPCA. If quantity will not exceed the source-wide caps, Gopher State must production will not exceed the source-wide caps, Gopher State must hazardous air pollutants. To demonstrate that emissions from wet cake of 9.0 TPy for any single hazardous air pollutant or 24.0 TPy for all wide emission cap of 95 TPy or the source-wide allowable emission caps production may only take place if emissions will not exceed the source-of upset, breakdown or malfunction after July 10, 2003, wet cake control technology upset, breakdown or malfunction. During such periods may take place during periods of dryer system and associated dryer (k). Wet Cake Operations: Through July 10, 2003, wet cake production

Requirements).

Manufacturing industry Leak Detection, Monitoring and Repair Vessels); and NSPs subpart VV (Synthetic Organic Chemicals million BTU/hour); NSPs subpart Kb (Volatile Organic Liquid Storage Commercial-Institutional Steam Generating Units less than 29 MW (100 The following NSPs apply: NSPs subpart Dc (Small Industrial implementation applicable NSPs required at 40 C.F.R. Part 60. implementation applicable NSPs required at 40 C.F.R. Part 60.

operating permit application required under Paragraph 17.

control measures shall be implemented and included in the are required to meet the 9.0 or 24.0 TPy emission caps, such approved Control Technology Plan, additional control measures Technology Plan. If, based on emissions testing as set forth in the applicable emission caps as set forth in the approved Control rolling sum will be demonstrated based on the schedule to meet approved Control Technology Plan, compliance with the 12-month start-up of the last piece of control equipment required in the the first eleven months, beginning no later than 180 days following 12-month rolling sum, rolled monthly, and recorded monthly. For 9.0 TPy for any single HAP or 24.0 TPy for all HAPs based on a its facility so as not to exceed source-wide allowable emissions of Control Technology Plan, Gopher State shall continually operate of the last piece of control equipment required in the approved (",HAPs"); Beginning no later than 180 days following the start-up requirements of 40 C.F.R. Part 60, Subpart VV. The following (i). Additional Requirements for Hazardous Air Pollutants

unit is subject to these requirements: FS 004

requirements of 40 C.F.R. Part 60, Subpart VV. The following (h). Enzyme VOC: Implement and comply with the

allowable emission caps, or a schedule to meet the 95 TPy allowable emission caps, as well as excluded from the requirements of this Paragraph. This permit shall incorporate the 95 TPy and any modification that qualifies under Minnesota Rule 7007.1250 and 7007.1450 subp. 2 are Applicable Emission Limits" and the approved Control Technology Plan of this Consent Decree caps. However, the modifications required in Part V Section A ("Installation of Controls and increase as defined by 40 C.F.R. Part 52, but will not exceed the 95 TPy allowable emission construction or operation of any future modification that will result in a significant net emission Consent Decree, Gopher State shall obtain a federally-enforceable permit prior to beginning 18. Future Modifications. During the period that Gopher State is subject to this Paragraph.

application for Air Emission Permit No. 12300019-003 as part of the application required in this wide allowable emission caps described in Paragraph 9. Gopher State may submit its resubmission modification to its federally-enforceable operating permit(s) to incorporate the 95 TPy source-expiration of Air Emission Permit No. 12300019-003, Gopher State shall apply for a control equipment required in the approved Control Technology Plan, but no later than the 17. Source-wide Permit: Within 180 days following the start-up of the feed dryer under this Consent Decree.

B. PERMITTING AND MODIFICATIONS

Technology Plan is incorporated by reference herein and made directly enforceable by Plaintiff's accordance with the schedule set forth in that plan. Gopher State's approved Control 16. Gopher State shall implement the approved Control Technology Plan in initiated until the dryer control technology is fully operational. time of the upset, breakdown or malfunction and no fermentation can be under this Consent Decree.

operate each unit in accordance with the operating parameters set forth in the approved Control equipment required in its approved Control Technology Plan, Gopher State shall continually beginning no later than 180 days following the start-up of each piece of control

21. Unit Emission Limit for VOC, CO, NO_x:

C. EMISSION LIMITS

40 C.F.R. § 52.21(r)(4).

TPY source-wide caps, or prior to relaxation of a federally-enforceable permit limit pursuant to increase in its limited potential emissions of any pollutant regulated under the Act above the 95 future modifications during the effective period of the Consent Decree that will cause any 20. Gopher State shall obtain a PSD permit prior to beginning construction of any trading program.

uncontrolled feed dryer emissions may not be used for any emissions offset, banking, selling or offset, banking, selling or trading program. VOC emissions reductions up to 98 percent of the required under this Consent Decree and the applicable NSPs may not be used for any emissions 40 C.F.R. § 52.21(b)(3). In addition, the emission reductions of PM, PM₁₀, NO_x, SO₂ and CO the implementation of the approved Control Technology Plan for netting purposes as defined by emissions increase, Gopher State cannot take credit for any emission reductions resulting from

19. In determining whether a future modification will result in a significant net Control Technology Plan.

Consent Decree, including the requirements establishing the emission level reductions within the recording requirements as set forth in the approved Control Technology Plan and this the emission limits (to the extent unaffected by the permit modification), and monitoring and

2). If the limit established by the MPCA is more stringent than the limit Gopher State a reasonable time to install the required controls.

written notice to provide MPCA with a schedule to install the controls. The MPCA shall allow from, those proposed by Gopher State, Gopher State shall have 30 days from the date of the 1). If MPCA determines that controls are required in addition to, or different this Consent Decree.

referred to in subsection (3) of this paragraph, shall be incorporated into and enforceable under required controls. The contents of the notice, or if applicable, the results of Dispute Resolution MPCA shall provide written notice to Gopher State of the established limit and any additional required, and to establish a schedule for installation of, or routing to, VOC control equipment. emission limit for the cooling cycle, to identify any VOC emission control that will be (b). MPCA will use the information provided by Gopher State to establish a VOC emissions to existing control equipment.

and, if applicable, a schedule to install additional control equipment or to route cooling cycle to MPCA the evaluation information, a proposed VOC emission limit for the cooling cycle, routing post-baghouse cooling emissions to the dryer control equipment; and (3) submit VOCs in the cooling cycle, either through additional control equipment or by post-baghouse emissions; (2) evaluate the technical feasibility and cost effectiveness of reducing cooling as required in Paragraphs 15(d) and 28(a), Gopher State shall: (1) evaluate VOCs in the (a). By no later than 90 days following the initial performance test of the cooling 22. VOC Limit for Cooling Cycle:

Techology Plan.

process pursuant to Part X ("Dispute Resolution") and obtain a stay from the Court. Until a limit the MPCA's proposed limit, Gopher State shall have 60 days to invoke the Dispute Resolution shall be incorporated into and enforceable under this Consent Decree. If Gopher State contests shall provide written notice to Gopher State of the established limit and the established limit collected and other available pertinent information to establish limits for PM and PM₁₀. MPCA State shall immediately comply with the proposed emission limit. MPCA will use the data collected from initial performance testing and other available pertinent information. Gopher 15(a) and 28, Gopher State shall propose PM and PM₁₀ emission limits based on the data initial performance test of the control equipment for the feed dryer as required in Paragraphs 24. **Unit Emission Limit for PM and PM₁₀:** By no later than 45 days following the specified in the approved Control Technology Plan.

Paragraph 15(g). The method to determine compliance with the limit in Paragraph 15(g) is factors that it will use to calculate actual NO_x emissions to demonstrate compliance with Paragraphs 15 (a), (c), and (g) and 28, Gopher State shall establish unit specific NO_x emission 23. **NO_x Emission Factors:** Following the initial performance test as required in limit(s) it proposed under Paragraph 22(a)(3).

under the Dispute Resolution process herein, Gopher State shall comply with the emission Part X ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established controls, Gopher State shall have 60 days to invoke the Dispute Resolution process pursuant to 3). If Gopher State contests the MPCA's proposed limit or MPCA's proposed the VOC control equipment to comply with the established limit(s).

proposed by Gopher State, Gopher State shall have 60 days from the date of the installation of

continually operate its facility so as not to exceed the source-wide allowable emission caps of control equipment required in its approved Control Technology Plan, Gopher State shall

(b). Beginning no later than 180 days following start-up of the last piece of caps are amended by or incorporated into a federally-enforceable permit for the facility. Plan. This provision shall survive termination of this Consent Decree until the 95 TPy emission on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based 180 days following start-up of the last piece of control equipment required in the approved sum, rolled monthly, and recorded monthly. For the first eleven months, beginning no later than TPy for each pollutant for VOCs, PM, PM₁₀, SO₂, NO_x, and CO based on a 12-month rolling continually operate its facility so as not to exceed the source-wide allowable emission caps of 95 control equipment required in its approved Control Technology Plan, Gopher State shall

(a). Beginning no later than 180 days following start-up of the last piece of parameters, and recordkeeping set forth in the approved Control Technology Plan and this to its federally-enforceable operating permit to incorporate the emission limits, monitoring expiration of Air Emission Permit No. 12300019-003, Gopher State shall apply for modification control equipment required in its approved Control Technology Plan, but no later than the 25. Unit Operating Permits: Within 180 days following the start-up of the feed drier emission limit(s) it proposed under this Paragraph. is established under the Dispute Resolution process herein, Gopher State shall comply with the

26. Source-wide Caps: Consent Decree.

28.a. By no later than 60 days following the start-up of the baghouse required in the units in accordance with MPCA's policy regarding performance testing frequency.

than annually for the effective period of the Consent Decree. Gopher State shall retest all other Minnesota Rule 7017. Gopher State shall release the dryer for VOCs, CO, PM, and PM₁₀ no less and/or emission limits for those units. Gopher State shall follow all testing requirements in MPCA and U.S. EPA approved test protocol, that it has met the required destruction efficiency approved Control Technology Plan ("Initial Performance Test"), conducted in accordance with through emissions testing of the feed dryer, fermentation units, and boilers as specified in the equipment required in the approved Control Technology Plan, Gopher State shall demonstrate 28. By no later than 180 days following the start-up of the feed dryer control reporting, as set forth in the approved Control Technology Plan.

27. Gopher State shall demonstrate continuous compliance with the emission limits established under this Consent Decree by the use of parametric monitoring, recording and reporting, as set forth in the approved Control Technology Plan.

D. DEMONSTRATION OF COMPLIANCE

beginning no later than 180 days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent Decree until the 9.0 TPY and 24.0 TPY emission caps are amended by or incorporated into a Decree by the use of parametric monitoring, recording and reporting, as set forth in the federal-enforceable permit for the facility.

9.0 TPY for any single hazardous air pollutant or 24.0 TPY for all hazardous air pollutants based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months,

30. Beginning with the first full calendar quarter following lodging of this Consent Decree, Gopher State shall submit written reports within 30 days following each calendar quarter to MPCA and U.S. EPA that itemize Consent Decree requirements and the approved Control Technology Plan requirements, the applicable deadlines, the dates the tasks were completed, unit emissions data and data to support Gopher State's compliance status with the terms of this Consent Decree. Reports shall be sent to the addresses identified in Paragraph 64 ("Notice"). Emissions data may be submitted in electronic format.

31. Gopher State shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that support the reporting and compliance requirements under this Part for a period of three years following the termination of this Consent Decree, unless other regulations require the records to be maintained longer.

E. RECORDKEEPING AND REPORTING REQUIREMENTS

Approved Control Technology Plan, Gopher State shall conduct emissions testing of the cooling cycle as specified in the approved Control Technology Plan, conducted in accordance with MPCA and U.S. EPA approved test protocol. Gopher State shall follow all testing requirements in Minnesota Rule 7017 and shall retest the cooling cycle in accordance with MPCA's policy regarding performance testing frequency.

29. Gopher State shall maintain control technology performance criteria monitoring data and records as set forth in the approved Control Technology Plan, and shall make them available to the Plaintiff upon demand as soon as practicable.

33. Within thirty (30) calendar days of entry of this Consent Decree, the Defendant shall pay to the Plaintiff a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413, in the amount of \$18,904 (Eighteen Thousand Nine Hundred and Four Dollars). Pursuant to the Act, the following factors were considered in determining a civil penalty, in addition to other factors as justice may require: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

34. Of the total penalty, \$9,452, shall be paid to the United States by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07784, and the civil action case name and case number of the District of Minnesota. The costs of such EFT shall be Gopher State's responsibility. Payment shall be made in accordance with instructions provided to Gopher State by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Minnesota. Any funds received after 11:00 a.m. (EST) shall be credited

VI. CIVIL PENALTY

for environmental management and compliance:

for the following:

Plaintiffs, to be paid 50 percent to the United States and 50 percent to the Plaintiff-Intervenor,
37. The Defendant shall pay stipulated penalties in the amounts set forth below to the

VII. STIPULATED PENALTIES

to reduce its federal or state tax obligations.

36. No portion of the \$18,904 civil penalty to be paid by Gopher State shall be used
interest.

creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and
and other applicable federal and state authority. The Plaintiffs shall be deemed a judgment
Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, Minnesota Statute Chapter 16D
judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the
Decree, this Consent Decree shall constitute an enforceable judgment for purposes of post-
stipulated penalty amount at the rate specified in 31 U.S.C. § 3717. Upon entry of this Consent

35. The Defendant shall pay statutory interest on any overdue civil penalty or

St. Paul, Minnesota 55155-4194

520 Lafayette Road N
Minnesota Pollution Control Agency
Enforcement Penalty Coordinator

Control Agency and delivered to:

State of Minnesota, made in the form of a certified check payable to the Minnesota Pollution
total remaining amount, \$9,452 in civil penalties, shall be paid to the Plaintiff-Intervenor the
number, to the Department of Justice and to EPA, as provided in Paragraph 64 ("Notice"). The
File Number and DOJ Case Number 90-5-2-1-07784, and the civil action case name and case
on the next business day. Gopher State shall provide notice of payment, referencing the USAO

notice: E („Recordkeeping and Reporting Requirements“) of this Consent Decree, per day per report or

(e). for each failure to submit reports or studies as required by Part V Section C („Emission Limits“): \$500 per emissions test for each pollution

Approved Control Technology Plan or emission limits set pursuant to Part V Section C (d). for failure to demonstrate compliance with emission limits set forth in the day per unit:

1st through 30th day after deadline	\$250
31st through 60th day after deadline	\$500
Beyond 60th day	\$1,000

(c). for failure to conduct a compliance test as required by Paragraph 28, per permits under Paragraphs 17, 18, 20, and 25:

1st through 30th day after deadline	\$800
31st through 60th day after deadline	\$1,200
Beyond 60th day	\$2,000

technology systems set forth in the Control Technology Plan and applying for, or obtaining, (b). for each day of failure to meet the deadlines for installation of control

1st through 30th day after deadline	\$250
31st through 60th day after deadline	\$500
Beyond the 60 th day	\$1000

under Paragraphs 22 and 24:

(a). for each day of failure to propose PM, PM¹⁰, and VOC emissions limits

Consent Decree to which they are entitled. The Plaintiffs will not seek stipulated penalties and

40. The Plaintiffs reserve the right to pursue any other remedies for violations of this
the balance, if any, returned to the Defendant.

was determined to be due by the Court plus the interest that has accrued on such amount, with
returned to the Defendant. Otherwise the Plaintiffs shall be entitled to the escrowed amount that
thereafter resolved in Defendants favor, the escrowed amount plus accrued interest shall be
within the time provided in Paragraph 38 for payment of stipulated penalties. If the dispute is
pending resolution of the matter and by invoking the Dispute Resolution provisions of Part X
for any given event or related series of events at any one plant, in a commercial escrow account
the Plaintiffs by placing the disputed amount demanded by the Plaintiffs, not to exceed \$20,000
penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to
39. Should Gopher State dispute its obligation to pay part or all of a stipulated
paid to the Plaintiffs in the manner set forth in Part VI ("Civil Penalty") of this Consent Decree.
no later than thirty (30) days after Defendant receives such demand. Stipulated penalties shall be
38. Gopher State shall pay stipulated penalties upon written demand by the Plaintiffs
State's sale or transfer of the facility, \$250 per day.

(g). for failure to notify the Plaintiffs pursuant to Paragraph 2 of Gopher
38 and 39 of this section, \$500 per day per penalty demand.

(f). for failure to pay or escrow stipulated penalties, as specified in Paragraphs
Beyond 60th day \$1,000
1st through 30th day after deadline \$250
31st through 60th day after deadline \$500

43. Failure by Defendant to provide notice to Plaintiff of an event which causes or reasonable measures to avoid or minimize such delays.

and the schedule by which those measures will be implemented. Defendant shall adopt all the delay, and the measures taken or to be taken by Defendant to prevent or minimize the delay Decree and describe the anticipated length of time the delay may persist, the cause or causes of diligence. In this notice Defendant shall specifically reference this Paragraph of this Consent when Defendant first knew of the event or should have known of the event by the exercise of due Plaintiff in writing as soon as practicable, but in any event within twenty (20) business days of performance in complying with any provision of this Consent Decree, Defendant shall notify the Plaintiff if any event occurs which causes or may cause a delay or impediment to

IX. FORCE MAJEURE

Statute §§ 15.04 and 116.091 or any other applicable law.

conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414, and Minnesota Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA and MPCA to equipment, and inspecting and copying all records maintained by Defendant required by this of monitoring compliance with the provisions of this Consent Decree, including inspecting plant of Gopher State's plant identified herein at Paragraph 3(b) at any reasonable time for the purpose compliance with the facility's safety requirements, shall have a right of entry upon the premises state agency, including independent contractors, upon presentation of proper credentials and in 41. Any authorized representative of the EPA or MPCA, or an appropriate federal or

VIII. RIGHT OF ENTRY

civil or administrative penalties for the same violation of the Consent Decree.

including any entity controlled by the Defendant, and that the Defendant could not have performance has been or will be caused by circumstances beyond the control of the Defendant, performance to this Court for resolution and the Court determines that the delay or impediment to twenty (20) business days to file its response to said petition. If the Defendant submits the Court. Once the Defendant has submitted this matter to this Court, the Plaintiffs shall have after receiving notice of the Plaintiffs' position, by filing a petition for determination with this Defendant must submit the matter to this Court for resolution within twenty (20) business days performance is caused by a force majeure event, to avoid payment of stipulated penalties, the 45. If the Plaintiffs do not accept the Defendant's claim that a delay or impediment to such delay.

circumstances. The Defendant shall not be liable for stipulated penalties for the period of any requirement(s) affected by the delay by a period equivalent to the delay actually caused by such diligence, the parties shall stipulate to an extension of the required deadline(s) for all the Defendant, and that the Defendant could not have prevented the delay by the exercise of due caused by circumstances beyond the control of the Defendant, including any entity controlled by 42. If the Plaintiffs agree that the delay or impediment to performance has been or will be event within thirty (30) days of receipt of the Force Majeure notice provided under Paragraph Defendant's claim of a delay or impediment to performance as soon as practicable, but in any 44. The United States or MPCA shall notify the Defendant in writing regarding the requirement, and, if voided, is of no effect as to the particular event involved.

Plaintiffs as to the specific event for which the Defendant has failed to comply with such notice may cause a delay or impediment to performance may render this Part IX voidable by the

48. Notwithstanding any other provision of this Consent Decree, this Court shall not permitting authority in an expeditious fashion.

(c). prosecuting appeals of any disputed terms and conditions imposed by the authority in a timely fashion; and

(b). responding to requests for additional information by the permitting authority in a timely and complete permit application;

(a). submitting a timely and complete permit application;

necessary permit including but not limited to:

event of Force Majeure where the Defendant has taken all steps available to it to obtain the control of the Defendant, or serve as a basis for an extension of time under this Part.

However, failure of a permitting authority to issue a necessary permit in a timely fashion is an the Defendant's obligations under this Consent Decree shall not constitute circumstances beyond the control of the Defendant, or cause the Defendant to bear the burden of providing the duration and extent of any delay(s) attributable to such circumstances. An extension of one delay by the exercise of due diligence. The Defendant shall also bear the burden of preventing its control, including any entity controlled by it, and that the Defendant could not have prevented requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond the exercise of due diligence, the Defendant shall bear the burden of providing that any delay of any subsequent compliance date or dates.

47. Unanticipated or increased costs or expenses associated with the performance of a subsequent compliance date or dates.

compliance date based on a particular event may, but does not necessarily, result in an extension the duration and extent of any delay(s) attributable to such circumstances. An extension of one delay by the exercise of due diligence. The Defendant shall also bear the burden of providing its control, including any entity controlled by it, and that the Defendant could not have prevented requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond the exercise of due diligence, the Defendant shall bear the burden of providing that any delay of any subsequent compliance date or dates.

46. The Defendant shall bear the burden of providing that any delay of any event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that caused by such circumstances.

event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that caused by such circumstances.

extend beyond thirty (30) calendar days from the date of the first meeting between of informal negotiations between the parties. Such period of informal negotiations shall not 52. Disputes submitted to dispute resolution shall, in the first instance, be the subject discuss the dispute informally not later than fourteen (14) days from the receipt of such notice. acknowledges receipt of the notice and the parties shall expeditiously schedule a meeting to noticing party's position with regard to such dispute. The party receiving such a notice shall pursuant to this Part X. The notice shall describe the nature of the dispute, and shall state the of written notice by one of the parties to this Consent Decree to another advising of a dispute 51. The dispute resolution procedure required herein shall be invoked upon the giving provided in Part IX regarding Force Majeur.

limits established by the MPCA in Part V Section C ("Emission Limits"), except as otherwise resolve all disputes arising under this Consent Decree, including but not limited to emission 50. The dispute resolution procedure provided by this Part X shall be available to

X. DISPUTE RESOLUTION

failure thereafter to complete the work in accordance with the extended or modified schedule. Plaintiffs or approved by this Court. Defendant shall be liable for stipulated penalties for its in the work that occurred as a result of any delay or impediment to performance agreed to by the modify the schedule for completion of work under this Consent Decree to account for the delay the parties by agreement, or this Court, by order, may in appropriate circumstances extend or 49. As part of the resolution of any matter submitted to this Court under this Part IX, Defendant delivering a notice of Force Majeur or the parties' inability to reach agreement. draw any inferences nor establish any presumptions adverse to either party as a result of

in the work that occurred as a result of dispute resolution. Defendant shall be liable for modify the schedule for completion of work under this Consent Decree to account for the delay parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or 56. As part of the resolution of any dispute submitted to dispute resolution, the evidence in the record as identified and agreed to by all the Parties.

The final position of the Plaintiffs shall be upheld by the Court if supported by substantial either party as a result of invocation of this Part X or the parties' inability to reach agreement. resolution, this Court shall not draw any inferences nor establish any presumptions adverse to 55. Notwithstanding any other provision of this Consent Decree, in dispute parties to the dispute.

is required, the time periods set out in this Part X may be shortened upon motion of one of the 54. Where the nature of the dispute is such that a more timely resolution of the issue respond to the petition within forty-five (45) calendar days of filing.

supporting data, analysis, and/or documentation relied on by the Defendant. The Plaintiffs shall the nature of the dispute, and includes a statement of the Defendant's position and any summary of the Plaintiffs position, the Defendant files with this Court a petition which describes bidding unless, within forty-five (45) calendar days of the Defendant's receipt of the written position regarding the dispute. The position advanced by the Plaintiffs shall be considered negotiations period, the Plaintiffs shall provide the Defendant with a written summary of their 53. In the event that the parties are unable to reach agreement during such informal shorten or extend this period.

representatives of the Plaintiffs and the Defendant, unless the parties' representatives agree to

7017.2001-7017.2060; (g) notification, recordkeeping and reporting requirements under Minn. R. 7011.0010-7011.9990, and performance tests under Minn. R. 7002.0025-7002.0095; (f) performance standards for stationary sources under Minn. R. 7007.0050-7007.1850; (e) air emissions fee requirements under Minn. R. 7007.0050-7007.1850; (d) all air permit requirements under Minn. R. 7007.0050-7007.1850; (c) air regulations which incorporate and/or implement the above-listed federal regulations in items (a) C of the Act and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and the Minnesota C.F.R. Part 63, pursuant to Sections 112(d) and 112(g) of the Act; (c) PSD requirements at Part subparts DC, Kb, and VV; (b) National Emission Standards for Hazardous Air Pollutants, 40 under the following statutory and regulatory provisions: (a) NSPS, 40 C.F.R. Part 60, including violations at its facility based on facts and events that occurred during the relevant time period Interviewor's Complaints and all civil and administrative liability of the Defendant for any the Defendant to the Plaintiffs for the violations alleged in the United States' and Plaintiff's Decree constitutes full settlement of and shall resolve all past civil and administrative liability of 58. **Resolution of Claims.** Satisfaction of all of the requirements of this Consent Quality permit, the terms of this Consent Decree shall control during the effective period of the regulations. To the extent that the terms of this Consent Decree conflict with the terms of any air terms does not guarantee compliance with any applicable federal, state or local laws or

57. **Effect of Settlement.** This Consent Decree is not a permit; compliance with its stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XI. GENERAL PROVISIONS